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No. 80-1385

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

INDUSTRIAL CONTRACTORS, INC., MUNICIPAL ENGINEERING AND CONSTRUCTION CORP., and EVANSVILLE CONTRACTORS ASSOCIATION, INC.,

Petitioners,

v.

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION, NO. 215 a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondent does not agree with the question presented as stated by Petitioners. The only question presented in the instant case is:

Where a collective bargaining agreement provides for the arbitration of any controversy with respect to its interpretation, application or enforcement, and makes explicit reference to work jurisdiction, did the Courts below properly conclude that Respondent's work assignment grievances were arbitrable?

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RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The Opinion and Judgment of the United States Court of Appeals for the Seventh Circuit is not officially reported (Pet. App. 1A-7A). The decision and judgment of the United States District Court for the Southern District of Indiana in this case is also not officially reported (Pet. App. 8A-14A).

JURISDICTION

The judgment of the Court of Appeals was entered on November 22, 1980. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The relevant portions of the Labor Management Relations Act, as amended, are § 301, 29 U.S.C. § 185 and § 203(d), 29 U.S.C. § 173(d). Section 301 is set forth in the Petition at page 4. Section 203(d) reads as follows:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."

STATEMENT OF THE CASE

The Petitioners, Industrial Contractors, Inc., Municipal Engineering and Construction Corp. and Evansville Contractors Association, Inc. (hereinafter referred to as the "Employers") are parties to a labor agreement with Teamsters Local Union No. 215 (hereinafter referred to as the "Union"). The labor agreement provides for final and binding arbitration of disputes which are not resolved at earlier steps of the grievance procedures. With respect to matters which are subject to the grievance-arbitration procedure, the labor agreement provides that:

> If any controversy, dispute or grievance arises with respect to the interpretation, application or enforcement of any of the provisions of this Agreement, the same shall be submitted [to the grievance procedure]." (Pet. App. 2A).

In September, 1978, the Union filed four grievances; each grievance alleged that the Employers had violated the labor agreement by assigning bargaining unit work to persons not in the bargaining unit represented by the Union (Pet. App. 15A-22A). On the subject of work assignments, the labor agreement provides:

"Article VIII, Section 1:

... Drivers of Pickup Trucks when hauling equipment, supplies and materials to, from and on the job site, except when used by a superintendent or a foreman for his own transportation or for the use of a mechanic for the transportation of himself, his tools and repair parts.

* * *

Article VIII, Section 3:

The Employer agrees to respect the jurisdiction of the Union and shall not direct or require employees or persons other than those listed in Article VIII, Section 1, to perform work which is recognized as the work of the employees in said unit. It is agreed that the provisions of this Article shall be applied in compliance with existing laws.

* * *

Article VI, Section 22:

The Employer agrees to the jurisdiction of work assigned and/or generally covered by the Teamsters (Local 215) in this geographical area." (Pet. App. 2A-3A).

When the Employers refused to arbitrate the four work assignment grievances, the Union petitioned the District Court for an order compelling arbitration. The District Court held that the agreement to arbitrate any controversy with respect to the interpretation of the labor agreement included the four work assignment grievances (Pet. App. 8A-14A). The Court of Appeals held that the grievances were arbitrable and affirmed the judgement of the District Court (Pet. App. 1A-7A).

REASONS FOR DENYING THE WRIT

The Court Of Appeals Applied The Legal Standards Enunciated By This Court, And The Decision Below Raises No Important Question Of Federal Law.

It is undisputed that the Employers and the Union entered into a labor agreement which provides for final and binding arbitration. The Employers claim only that the subject matter of certain grievances—work assignments—is excluded from the grievance-arbitration procedure. However, the Court has clearly and repeatedly stated the legal standards applicable to disputes involving the substantive arbitrability of grievances arising under a labor agreement. The Court of Appeals simply and correctly applied these standards in the instant case.

The presumptive arbitrability of grievances alleging the violation of a labor agreement has been settled law since the *Steelworkers Trilogy*. In *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 567-568 (1960), the Court held that where the parties have agreed to submit all questions of contract interpretation to the arbitrator, a court "is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract." Whether the moving party is right or wrong is a question for the arbitrator.

Since *United Steelworkers* v. *American Mfg. Co.*, the Court has reiterated and strengthened the presumption favoring the arbitrability of grievances under a labor agreement. Thus, in *Gateway Coal Co.* v. *United Mine Workers,* 414 U.S. 368, 377-378 (1974), the Court again noted that labor arbitration should be resolved in favor of the arbitrability of a grievance. See also, *John Wiley & Sons* v. *Livingston,* 376 U.S. 543 (1964). Most recently, in *Nolde Bros., Inc.* v. *Local No. 258, Bakery & Confectionery Workers Union,* 430 U.S. 243, 254-255 (1977), the Court stated that parties must be deemed to have been conscious of the federal labor policy favoring arbitration when they agreed to arbitrate differences arising under the labor agree-

ment. Consequently, the failure to expressly exclude a subject from arbitration affords a strong basis for concluding that the parties intended to arbitrate such disputes.

The labor agreement in the instant case contains no such express exclusion of work assignment disputes from arbitration. Rather, the arbitration clause covers any "controversy, dispute or grievance. . .with respect to the interpretation, application or enforcement of any of the provisions of this Agreement." The four grievances all concern work assignments, a subject covered by specific provisions of the labor agreement. Since these claims are on their face governed by the labor agreement and are not specifically excluded from arbitration, the Court's decisions mandated a holding that the grievances were arbitrable.

As noted by the Court of Appeals, Petitioners' arguments concerning past practice and bargaining history pertain to the merits of the dispute. The Court has specifically forbidden such back-door attempts to have courts consider the merits of grievances under the guise of determining arbitrability. *United Steelworkers* v. *American Mfg. Co., supra* at 568. The Court has warned the lower federal courts to

> "... view with suspicion an attempt to persuade it to become entangled in the construction of the substantial provisions of a labor agreement even through the back door of interpretation of the arbitration clause, when the alternative is to use the services of an arbitrator." *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 585 (1960).

In this case, the court below heeded the Court's admonition and properly limited its inquiry to whether the grievances on their face were within the scope of the arbitration clause. Petitioners' arguments concerning past practice and bargaining

history are properly addressed to the arbitrator, the parties agreed upon tribunal for resolving the merits of these disputes.[1]

CONCLUSION

For the reasons stated above, the Petition should be denied.

Respectfully submitted,

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[1] Work assignment disputes such as the instant grievances are grist for arbitrator's mills. See, Elkouri & Elkouri, *How Arbitration Works,* (3d ed.), pp. 511-516. The Court has recognized the special contributions which labor arbitrators can bring to the resolution of these disputes. See, *Carey* v. *Westinghouse Electric Corp.*, 375 U.S. 261 (1964).